

**RESOLUTION OF THE REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS ADOPTING FINDINGS IN CONNECTION WITH THE
DEVELOPMENT OF A RESIDENTIAL CONDOMINIUM PROJECT BY WESTERN PACIFIC
HOUSING, INC.; AUTHORIZING THE EXECUTION OF AN OWNER PARTICIPATION
AGREEMENT AND RELATED DOCUMENTS; AND APPROVING THE PROVISION OF FINANCIAL
ASSISTANCE TO ELIGIBLE VERY LOW-INCOME HOUSEHOLDS TO ASSIST IN THE
PURCHASE OF UNITS IN THE PROJECT**

WHEREAS, by Resolution No. 192 adopted in 1976, the Agency established the Milpitas Redevelopment Project Area No. 1 ("Project Area") and adopted a redevelopment plan for the Project Area (as thereafter amended, the "Redevelopment Plan");

WHEREAS, Agency staff have negotiated the terms and conditions under which Western Pacific Housing, Inc., a Delaware corporation ("Developer") or successor in interest would develop certain real property located on South Main Street near the Montague Expressway (the "Property") as a 147-unit residential condominium development (the "Project");

WHEREAS, the Project, the Property and the terms and conditions for development and financing of the Project are more particularly described in a proposed Owner Participation Agreement (the "OPA") a copy of which has been provided to the Agency;

WHEREAS, on October 12, 2005, the Milpitas Planning Commission found that the proposed Project conforms to the requirements of the Midtown Specific Plan and found that the Project is exempt from further environmental review pursuant to Government Code Section 65457 (CEQA exemption, Specific Plans) in that it is a residential development consistent with a specific plan for which an environmental impact report (Midtown Specific Plan and associated EIR) has been certified after January 1, 1980;

WHEREAS, the Developer and Agency staff have determined that it will not be economically feasible to develop the Project at the proposed level of income-targeting and affordability without the provision of financial assistance from the Agency, and despite good faith efforts on the part of Developer, no other reasonable means of private or commercial financing is reasonably available to finance the Project at such affordability and income levels;

WHEREAS, the proposed financing package includes \$1.2 million in Agency low- and moderate-income housing set-aside funds ("Agency Financial Assistance") to be used to assist eligible very low-income households to purchase units in the Project; and

WHEREAS, Developer and Agency staff have negotiated the terms and conditions of a Regulatory Agreement and Declaration of Restrictive Covenants ("Regulatory Agreement") which restricts the sale price of twenty-nine units in the Project so that such units will be affordable to very low- and moderate-income households.

NOW, THEREFORE, BE IT RESOLVED that the Redevelopment Agency of the City of Milpitas hereby:

1. Finds and determines that the proposed Project is exempt from further environmental review pursuant to Government Code Section 65457 (CEQA exemption, Specific Plans) and no Environmental Impact Report is necessary or required.

8/1/06
2. Finds that the development of the Property in accordance with the OPA will assist in the elimination of blight in the Project Area, will facilitate the development of housing for very low- and moderate-income households, will further the goals of the Redevelopment Plan, and will be consistent with the implementation plan adopted in connection therewith.

3. Finds that (i) the provision of the Agency Financial Assistance is necessary to make the Project financially feasible and affordable to very low-income households, (ii) it will not be economically feasible to develop the Project at the proposed level of income-targeting and affordability without such financial assistance, and (iii) despite good faith efforts on the part of Developer, no other reasonable means of private or commercial financing is reasonably available to finance the Project at such affordability and income levels.

4. Approves the OPA, the Memorandum of the OPA and the Regulatory Agreement and Declaration of Restrictive Covenants (each in the forms included as attachments to the OPA), authorizes the Chairperson, the Executive Director or the designee of either to execute and deliver each such document substantially in the forms on file with the City Clerk, and authorizes the recordation of the Memorandum of the OPA and the Regulatory Agreement in the Official Records of Santa Clara County.

5. Approves the provision of the Agency Financial Assistance to eligible very low-income households pursuant to the terms and conditions set forth in the OPA and the Regulatory Agreement.

6. Authorizes the Chairperson and the Executive Director to execute and deliver such other instruments and to take such other actions as necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED this _____ day of _____, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Jose S. Esteves, Chairperson

APPROVED AS TO FORM:

Steven T. Mattas, Agency Counsel

OWNER PARTICIPATION AGREEMENT

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

WESTERN PACIFIC HOUSING, INC.

_____, 2006

Exhibits

- A Legal Description of Property
- B Form of Memorandum of Owner Participation Agreement
- C Form of Certificate of Completion
- D Form of Regulatory Agreement

THIS OWNER PARTICIPATION AGREEMENT (this "**Agreement**") is entered into effective as of _____, 2006 ("**Effective Date**") by and between the Redevelopment Agency of the City of Milpitas, a public agency ("**Agency**") and Western Pacific Housing, Inc., a Delaware corporation ("**Developer**"). Agency and Developer are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) ("**CRL**"), the Agency has responsibility to implement the redevelopment plan adopted by the City Council of the City of Milpitas, California (the "**City**") by Ordinance No. 192 on September 21, 1976, and subsequently amended and restated on June 17, 2003 by Ordinance No. 192.14 (as so amended and restated, the "**Redevelopment Plan**") for the Milpitas Redevelopment Project Area No. 1 (the "**Project Area**").

B. Developer is the owner of or has the contractual right to purchase the real property located in the City at 1696 South Main Street/75 Montague Expressway and more particularly described in Exhibit A attached hereto (the "**Property**"). The Property is located within the Project Area and within the area governed by the Midtown Specific Plan ("**Specific Plan**"). Developer has proposed to develop a residential condominium project with related recreational facilities (the "**Project**") on the Property. The Project includes the construction of 147 townhouse units, of which 29 units will be sold at affordable housing cost to very low- and moderate-income households as more particularly described herein and in a Regulatory Agreement and Declaration of Restrictive Covenants to be recorded against the Property.

C. In May 2003, the Milpitas City Council ("**City Council**") certified an Environmental Impact Report ("**EIR**") for the Redevelopment Plan as a Program EIR pursuant to Section 15168 of the California Environmental Quality Act ("**CEQA**") Guidelines. On January 4, 2005, the City Council certified a subsequent EIR for the North Main Street Development Project which addresses the potential environmental effects of the Project.

D. The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the development of the Property as more particularly set forth herein. The Agency has determined that development of the Property pursuant to this Agreement is consistent with the Specific Plan, the Redevelopment Plan and the Implementation Plan for the Project Area, will be of benefit to the Project Area, and will further the goals of the Redevelopment Plan by alleviating blight and providing affordable housing in the Project Area.

E. A material inducement to Agency to enter into this Agreement is the agreement by Developer to develop the Property within the time periods specified herein and in accordance with the provisions hereof, and the Agency would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to complete the Project in accordance with such provisions and within such time periods.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS

1. Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

- 1.1 “Agency Financial Assistance” is defined in Section 4.1 hereof.
- 1.2 “Certificate of Completion” is defined in Section 3.14 hereof.
- 1.3 “Claims” is defined in Section 3.16 hereof.
- 1.4 “Conditions of Approval” is defined in Section 3.2 hereof.
- 1.5 “Construction Plans” is defined in Section 3.10 hereof.
- 1.6 “Environmental Laws” is defined in Section 8.4 hereof.
- 1.7 “Hazardous Materials” is defined in Section 8.3 hereof.
- 1.8 “Improvements” is defined in Section 3.8.1 hereof.
- 1.9 “Indemnitees” is defined in Section 3.16 hereof.
- 1.10 “Project” is defined in Recital B and further described in Section 3.2 hereof.
- 1.11 “Regulatory Agreement” is defined in Section 3.2 hereof.
- 1.12 “Restricted Units” is defined in Section 3.2 hereof.

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE AND TERM

2.1 Developer's Representations. Developer represents and warrants to Agency as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and

representations in this Section 2.1 not to be true, Developer shall immediately give written notice of such fact or condition to Agency. Developer acknowledges that Agency shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of Agency.

(i) Authority. Developer is a corporation duly organized and in good standing under the laws of the State of Delaware and authorized to do business and in good standing under the laws of the State of California. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer.

(ii) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(iv) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2 Agency Representations. Agency represents and warrants to Developer as follows, and Agency covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, Agency shall immediately give written notice of such fact or condition to Developer. Agency acknowledges that Developer shall rely upon Agency's representations made herein notwithstanding any investigation made by or on behalf of Developer.

(i) Authority. Agency is a public entity duly organized and in good standing under the laws of the State of California. Agency has the full right, power and authority to undertake all obligations of Agency as provided herein, and the execution, performance and delivery of this Agreement by Agency have been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Agency have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Agency.

(ii) No Conflict. Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Agency to perform its obligations under this Agreement.

(iv) No Bankruptcy. Agency is not the subject of a bankruptcy or insolvency proceeding.

2.3 Effective Date; Term; Memorandum. The obligations of Developer and Agency hereunder shall be effective as of the Effective Date. Except as to those obligations of the Parties which survive the expiration or termination of this Agreement, the term of this Agreement shall expire on the date that Developer's entitlements to develop the Property pursuant to the City approvals granted for the Project terminate, unless this Agreement is sooner terminated pursuant to the terms hereof or extended by written agreement of the Parties. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of this Agreement substantially in the form attached hereto as Exhibit B which shall be recorded in the Official Records of Santa Clara County on the date that Developer acquires the Property.

ARTICLE III

DEVELOPMENT OF THE PROJECT

3.1 The Property. Developer represents and warrants that as of the Effective Date: (i) Developer possesses or has the contractual right to acquire fee simple title to the Property, and (ii) to the best knowledge of Developer after reasonable inquiry, the Property is subject to no covenant, condition, restriction or agreement that would prevent the construction of the Project on the Property in accordance with this Agreement. If at any time the foregoing statements become untrue, the Agency shall have the right to terminate this Agreement upon written notice to Developer. In the event that Developer does not acquire fee simple title to the Property by June 30, 2006, this Agreement shall terminate and be of no further force or effect.

3.2 Scope of Development. Developer shall develop the Project on the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "**Conditions of Approval**").

The Project consists of the following: (i) the design, development and construction on the Property of a residential condominium project consisting of 147 townhouses and including at least twenty-nine (29) units (the "**Restricted Units**") which shall be sold at an affordable cost pursuant to the terms and conditions set forth in Section 3.3 hereof and a Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit D ("**Regulatory Agreement**") which the Parties shall execute concurrently with the execution of this Agreement and which shall be recorded in the Official Records of Santa Clara County on the date that Developer acquires the Property.

3.3 Affordable Units. Developer covenants and agrees for itself, its successors and assigns that no fewer than twenty-nine (29) of the units developed within the Project will be made available to persons of very low- and moderate-income in accordance with the terms hereof and the Regulatory Agreement. The Restricted Units shall include at least nine (9) units that are affordable to households of Very Low-Income and at least twenty (20) units that are affordable to households of no more than Moderate-Income (each as defined in the Regulatory Agreement). The Restricted Units shall be provided at the locations within the Project depicted on Exhibit B to the Regulatory Agreement (the "**Location Plan**"). Developer acknowledges that the purpose of the Location Plan is to ensure that the Restricted Units are not geographically segregated or concentrated within the Project. Developer shall comply with the terms and conditions of the Regulatory Agreement, including without limitation, the provisions thereof relating to the sale price, bedroom number and location of the Restricted Units and the requirement that the size and amenities of the Restricted Units shall be generally comparable to that of the other units in the Project. Developer shall market the Restricted Units no later than concurrently with Developer's marketing of the market-rate Project units.

3.4 Project Approvals. Developer acknowledges and agrees that execution of this Agreement by Agency does not constitute approval for the purpose of the issuance of building permits for the construction of the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to obtain all necessary entitlements, approvals, and permits for the construction of the Project, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review of the Project pursuant to CEQA.

Developer covenants that it shall: (i) obtain all necessary permits and approvals which may be required by Agency, City, or any other governmental agency having jurisdiction over the construction of the Project or the development of the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures imposed in connection with any environmental review of the Project, and (iv) not commence construction of the Project prior to issuance of building permits.

3.5 Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project or the development of the Property.

3.6 Development Schedule. Developer shall commence and complete construction of the Project and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth herein. Developer shall commence construction of the Project within one hundred twenty (120) days following issuance of building permits for the Project, and in no event more than eighteen (18) months following the Effective Date, and shall diligently prosecute to completion the construction of the Project in order to allow City issuance of a final

certificate of occupancy for the Project within sixty (60) months following commencement of construction. If Developer fails to commence or complete the Project in accordance with the foregoing, Agency shall have the right, at its option, to terminate this Agreement, and shall have no obligation to provide the Agency Financial Assistance.

3.7 Cost of Construction. Developer shall be solely responsible for all costs of developing the Property, construction of the Project, and compliance with the Conditions of Approval.

3.8 Rights of Access. For the purpose of ensuring that the Project is developed in compliance with this Agreement, Developer shall permit representatives of the Agency and the City to enter upon the Property to inspect the Project following 24-hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

3.8.1 Agency Disclaimer. Developer acknowledges that the Agency and City are under no obligation, and neither Agency nor City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the Agency or the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the Agency or the City as to the quality of the design or construction of the improvements constructed on the Property ("**Improvements**") or otherwise.

3.9 Compliance with Laws. Developer shall carry out the construction of the Project in conformity with all applicable local, state and federal laws, ordinances, rules and regulations, including without limitation, all applicable local, state and federal occupational, safety, health and labor standards.

3.10 Construction Plans. As used herein "**Construction Plans**" mean all construction documents upon which Developer and Developer's contractors shall rely in building the Project and developing the Property (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the development approvals issued by the Agency and the City for the Project, and shall not materially deviate therefrom without the express written consent of Agency and City.

3.11 Construction Pursuant to Plans. Unless modified by operation of Section 3.12, all construction of the Project shall be done in accordance with the Construction Plans, the Conditions of Approval, and any other plans or development approvals issued by the Agency or City with respect to the Project or the development of the Property.

3.12 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the Agency and City for their written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any plans or development approvals issued by Agency or City after the Effective Date. Unless a proposed change is approved by Agency or City within thirty (30) days it shall be deemed rejected. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect.

Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans.

3.13 Defects in Plans. Neither Agency nor City shall be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that Agency and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency of any of the insurance policies described in this Agreement.

3.14 Certificate of Completion for Project. Promptly after completion of construction of the Project and the sale of the Restricted Units in accordance with the provisions of this Agreement and the Regulatory Agreement and upon issuance of a Certificate of Occupancy by the City and written request of Developer, the Agency will provide an instrument ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all components of the Project have been completed. Such Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the development of the Property. Notwithstanding the foregoing, if the Project is developed in accordance with a phasing plan approved by City, ("**Approved Phasing Plan**"), the Agency shall record a Certificate of Completion for the portion of the Project comprising each such phase promptly after completion of construction of such phase and the sale of the Restricted Units included in such phase in accordance with the provisions of this Agreement and the Regulatory Agreement.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit C, and at Developer's option, shall be recorded in the Official Records of Santa Clara County. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing

money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement, including without limitation, Developer's obligations pursuant to the Regulatory Agreement.

3.15 Equal Opportunity. During the construction of the Project, there shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

3.16 Prevailing Wage Requirements. To the extent applicable to the Project, Developer and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. Developer is solely responsible for determining whether Prevailing Wage Laws apply to the Project.

Developer shall indemnify, defend (with counsel reasonably approved by Agency) and hold the Agency, the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency of any of the insurance policies described in this Agreement. The provisions of this Section 3.16 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

ARTICLE IV

AGENCY FINANCIAL ASSISTANCE; SPECIAL CONDITIONS

4.1 Agency Financial Assistance. Using funds from the Low- and Moderate-Income Housing Fund that the Agency maintains pursuant to CRL Sections 33334.2 and 33334.3 or other available resources, the Agency shall provide financial assistance ("**Agency Financial Assistance**") to eligible purchasers of the nine Restricted Units which, pursuant to the Regulatory Agreement are set aside for purchase by Very Low-Income Households. The

aggregate amount of the Agency Financial Assistance shall be One Million Two Hundred Thousand Dollars (\$1,200,000) ("**Agency Financial Assistance Fund**") which shall be provided to eligible purchasers in the form of deferred payment second mortgages and/or down payment assistance as determined by Agency in its discretion.

4.1.1 Low and Moderate Income Housing Fund. Agency will set aside Low and Moderate Income Housing Funds in the Agency Financial Assistance Fund to meet its obligations under Section 4.1 until the sooner of the termination of this Agreement or the disbursement of the funds thereof; provided, however, that Agency shall have no obligation to provide financial assistance upon the occurrence of a Developer Event of Default or if Developer defaults under the Regulatory Agreement.

4.1.2 Financial Assistance Limited. The Agency shall provide no financing or other assistance to the Developer or the Project. Developer acknowledges and agrees that (i) Developer is obligated to sell the Restricted Units at Affordable Housing Cost (as defined in the Regulatory Agreement) to eligible households of Very Low- and Moderate-Income pursuant to the terms and conditions of the Regulatory Agreement, (ii) it may be necessary for Developer to reduce the sale price of the Restricted Units in order to comply with such requirement, and (iii) Agency is under no obligation to provide assistance to Developer or to provide assistance to the purchasers of the Restricted Units in greater than the amount set forth in Section 4.1.

4.2 Odor-Reducing Equipment. Developer shall use its best efforts to include the installation of roof-mounted odor-reducing equipment or vents on the restaurant located adjacent to the Property at 1700 S. Main Street that will control odors. Proof of Developer's best efforts shall be submitted to and be to the satisfaction of the City Planning Division. The equipment must be approved by the City Fire and Building Departments. The equipment shall be screened from view to the approval of the City Planning Division, and shall be shown in the Construction Plans. Compliance with this Section shall be a condition to the issuance of building permits for the Project.

4.3 Community Facilities District. Prior to issuance of building permits for the Project, Developer shall submit to City a petition executed by all owners of the Property authorizing annexation of the Property into Community Facilities District CFD No. 2005-1 and the establishment of special taxes for the purpose of providing public services to the Property. Developer acknowledges that City's receipt of a petition for annexation and a consent and waiver authorizing the establishment of special taxes, each executed by all owners of the Property shall be a condition to the City's issuance of building permits for the Project. Developer shall comply with all state and local rules, regulations, policies and practices applicable to Community Facilities Districts, including without limitation, requirements for provision of notice and disclosure to future owners and/or residents of the Property.

ARTICLE V

USE OF THE PROPERTY

5.1 Maintenance. Developer shall maintain the Property, the Improvements and related landscaping and common areas in accordance with the Milpitas Municipal Code in a manner consistent with community standards, and shall comply with all applicable federal, state and local laws and regulations pertaining to the Property and the Project. Developer covenants that the portions of the Property undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards. Developer shall maintain the Project, including the walkways, driveways, and landscaping, in good repair and working order, and in a neat, clean and orderly condition, and from time to time shall make all necessary and proper repairs, renewals and replacements.

The Developer shall comply with any and all covenants and agreements established by any Declaration of Covenants, Conditions, and Restrictions (CC&Rs) affecting the Property to the extent that such CC&Rs are applicable to Developer, and shall comply with all applicable federal, state and local laws affecting the Property. Notwithstanding the foregoing, Developer's obligations established by this Section 5.1 may be assumed by a homeowner's association comprised of the owners of the residential condominiums in the Project, and upon such association's assumption of such obligations, Developer shall be released therefrom except to the extent that Developer remains obligated pursuant to the terms of any such declaration or homeowner's association charter and bylaws or other governing documents.

5.2 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property or payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

5.3 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, nor shall Developer or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing

provisions shall run with the land, be binding upon any subcontracting parties, successors, assigns and other transferees under this Agreement and shall remain in effect in perpetuity.

All deeds, leases or contracts for the sale, lease, sublease, or other transfer of the Property, or any portion thereof made or entered into by Developer, its successors or assigns, shall contain therein the following language:

(a) In Deeds:

"The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenants shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts:

"The contractor herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall be binding upon any

subcontracting Parties, successors, assigns and other transferees under the contract."

ARTICLE VI

RESTRICTIONS ON TRANSFER, ENCUMBRANCE

6.1 Change Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer are of particular concern to the Agency. It is because of these qualifications, experience, financial capacity and expertise that the Agency has entered into this Agreement. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

6.2 Prohibition on Transfer. Prior to Agency's issuance of a Certificate of Completion for the Project and the sale of the Restricted Units to Eligible Households pursuant to the Regulatory Agreement, Developer shall not except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of Agency, which shall not be unreasonably withheld. Any such attempt to assign this Agreement without the Agency's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the issuance by Agency of a Certificate of Completion for the Project and the sale of the Restricted Units to Eligible Households pursuant to the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of Agency. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and/or control of Developer, taking all transfers into account on a cumulative basis. The foregoing provisions shall not apply to a Transfer of the shares of D.R. Horton, Inc., a Delaware corporation.

6.3 Duration of Restrictions. The limitations on Transfer set forth in this Article VI shall not apply after the issuance of a Certificate of Completion and the sale of the Restricted Units in accordance with the terms of this Agreement and the Regulatory Agreement.

6.4 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the sale or lease of individual residences/condominium units within the Project; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property (subject to the requirements of Article VII) or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (v) any

conveyance to the principals of Developer provided that the terms of such conveyance provide for development and operation of the Property and Project in a manner consistent with this Agreement.

6.5 Requirements for Proposed Transfers. The Agency shall not unreasonably withhold its consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 6.5 shall not apply to Transfers described in clauses (i) through (iv) of Section 6.4):

(i) The proposed transferee demonstrates to the Agency's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Agency to competently complete construction of the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for Agency review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the Agency may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement and the Regulatory Agreement arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement and the Regulatory Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Agency in form recordable in the Official Records of Santa Clara County.

Consent to any proposed Transfer may be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board. If a proposed Transfer has not been approved by Agency in writing within thirty (30) days following Agency's receipt of written request by Developer, it shall be deemed rejected.

6.6 Effect of Transfer without Agency Consent.

6.6.1 In the absence of specific written agreement by the Agency, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement or the Regulatory Agreement.

6.6.2 Reserved.

6.6.3 Without limiting any other remedy Agency may have under this Agreement, or under law or equity, this Agreement may be terminated by Agency if without the prior written approval of the Agency, Developer assigns or Transfers this Agreement or the Property prior to the Agency's issuance of a Certificate of Completion. This Section 6.6.3 shall not apply to Transfers described in clauses (i) through (iv) of Section 6.4.

6.7 Recovery of Agency Costs. Developer shall reimburse Agency for all Agency costs, including but not limited to attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten days following Agency's delivery to Developer of an invoice detailing such costs.

ARTICLE VII

SECURITY FINANCING AND RIGHTS OF HOLDERS

7.1 No Encumbrances Except for Development Purposes. Prior to the Agency's issuance of a Certificate of Completion for the Project and the sale of the Restricted Units mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property or the Improvements only for the purpose of securing loans or funds to be used by Developer for the construction of the Project and other expenditures reasonably necessary for development of the Property pursuant to this Agreement. Developer shall promptly notify Agency of any mortgage, deed of trust, sale and lease-back or other financing, conveyance, encumbrance, or lien that has been or will be created or attached to the Property or the Improvements.

7.1.1 Memorandum and Regulatory Agreement to be Senior to Mortgages. Developer covenants and agrees that the Memorandum of this Agreement and the Regulatory Agreement shall be senior in priority to any mortgage, deed of trust, or other security instrument recorded against the Property, and that if any such instrument has been recorded against the Property prior to recordation of the Memorandum, Developer shall promptly secure execution of such subordination agreements as may be necessary to ensure that Agency's interests shall not be defeated as a result of foreclosure of any such instrument.

7.2 Holder Not Obligated to Construct. The holder of any mortgage, deed of trust or other security interest authorized by this Agreement is not obligated to construct or complete any of the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

7.3 Notice of Default and Right to Cure. Whenever Agency delivers any notice of default hereunder, Agency shall concurrently deliver a copy of such notice to each holder of record of any mortgage, deed of trust or other security instrument secured by the Property provided that Agency has been provided with the address for delivery of such notice. Agency

shall have no liability to any such holder for any failure by the Agency to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy any such default or breach. In the event that possession of the Property is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property within sixty (60) days after receipt of the Agency's notice, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify Agency of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to Agency under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to Agency that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement and shall be entitled to a Certificate of Completion upon compliance with the requirements of this Agreement and the Regulatory Agreement.

7.4 Failure of Holder to Complete Improvements. In any case where, six (6) months after default by Developer in completion of construction of the Improvements, the holder of record of any mortgage, deed of trust, or other security interest creating a lien or encumbrance upon the Property has not exercised its option to construct the Improvements, or having first exercised its option to construct, has not proceeded diligently with construction, Agency shall be afforded those rights against such holder that it would otherwise have against Developer under this Agreement.

7.5 Reserved.

7.6 Holder to be Notified. Developer, for itself, its successors and assigns hereby warrants and agrees that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its creating any security right or interest in the Property.

7.7 Modifications to Agreement. Agency shall not unreasonably withhold its consent to modifications of this Agreement requested by Developer's lender or lenders provided such modifications do not alter Agency's substantive rights and obligations under this Agreement.

7.8 Estoppel Certificates. Either Party shall, at any time, and from time to time, within thirty (30) days after receipt of written notice from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the

amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE VIII

ENVIRONMENTAL MATTERS

8.1 No Agency Liability. Neither Agency nor City shall be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials existing or occurring on the Property or any portion thereof, and Developer shall be solely responsible for all actions and costs associated with any such activities required for the development of the Project, the Property, or any portion thereof. Upon receipt of any notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Developer (as long as Developer owns the property which is the subject of such notice) agrees to timely initiate and diligently pursue and complete all appropriate response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials within such deadlines as specified by applicable Environmental Laws.

8.2 Environmental Indemnification. Developer shall indemnify, defend (with counsel approved by Agency) and hold the Indemnitees harmless from and against any and all Claims including without limitation any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this Section 8.2 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement.

8.2.1 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 8.2 above, are in no way limited or otherwise affected by any information the Agency or the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Agency or the City obtained such information from the Developer or from its own investigations. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Developer, of any of the insurance policies described in this Agreement.

8.3 Hazardous Materials. As used herein, the term “**Hazardous Materials**” means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

8.4 Environmental Laws. As used herein, the term “**Environmental Laws**” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety

Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 Developer's Default. The following events shall constitute an event of default on the part of Developer ("**Developer Event of Default**"):

- (a) Developer fails to commence or complete construction of the Project within the times set forth in Section 3.6, or abandons or suspends construction of the Project prior to completion of all construction for a period of six (6) months;
- (b) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VI;
- (c) Developer fails to maintain insurance on the Property and the Project as required pursuant to this Agreement;
- (d) Subject to Developer's right to contest the following charges pursuant to Section 5.2, if Developer fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Developer fails to cure such default within 30 days of date of delinquency, but in all events upon the imposition of any such tax or other lien;
- (e) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Agency or the City in connection with this Agreement or Developer's request for Agency Financial Assistance proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Agency or the City;
- (f) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;
- (g) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed

upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(h) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated; or

(i) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Agency shall have given written notice of the default to Developer.

Upon Developer's default under this Agreement, the Agency shall provide written notice of the purported breach, and unless a shorter cure period is specified or in the case of a Developer Event of Default arising under clauses (b) through (h) above, Developer shall have thirty (30) days after the date upon which Agency shall have given written notice of the default to Developer to cure such default; provided however, if the default is of a nature that it cannot be cured within 30 days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion. Developer and Agency shall confer and negotiate in good faith if completion cannot be completed within sixty (60) days.

9.2 Agency Default. An event of default on the part of Agency ("**Event of Agency Default**") shall arise hereunder if Agency fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Developer to Agency, or in the case of a default which cannot with due diligence be cured within thirty (30) days, Agency fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion. Developer and Agency shall confer and negotiate in good faith if completion cannot be completed within sixty (60) days.

9.3 Agency's Right to Terminate Agreement. If a Developer Event of Default shall occur and be continuing beyond any applicable cure period, then Agency shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If Agency makes such election, Agency shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

9.4 Remedies. Upon the occurrence of a Developer Event of Default or an Event of Agency Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, the non-defaulting party may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or

enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to recover damages or to obtain any other remedy consistent with the purpose of this Agreement.

9.4.1 No Damages Against City or Agency. Notwithstanding anything to the contrary set forth herein, in no event shall damages be awarded against City or Agency upon the occurrence of an Event of Agency Default or upon termination of this Agreement. Nothing herein is intended to limit Developers right to seek injunctive or other equitable relief. Agency acknowledges and agrees that an action by Developer for injunctive or other equitable relief ordering the disbursement of any Agency Loan proceeds is not and shall not be construed to be an action for damages.

9.4.2 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party.

9.5 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

ARTICLE X

INDEMNITY AND INSURANCE

10.1 Indemnity. Developer shall indemnify, defend (with counsel approved by Agency) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Developer's or Developer's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Developer's performance under this Agreement. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Developer, of any of the insurance policies described in this Agreement.

10.2 Liability and Workers Compensation Insurance.

(a) Developer shall maintain in force throughout the construction of the Project and through the issuance of the Certificate of Completion, comprehensive general liability and

property damage insurance, including personal injury, contractual, and owned and non-owned automobile insurance with such coverage and limits as may be reasonably requested by Agency and City from time to time, but in no event for less than the sum of Three Million Dollars (\$3,000,000) per occurrence combined single limit. During the term of this Agreement, Developer shall maintain Worker's Compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Developer shall indemnify the Indemnitees for any damage or other Claim resulting from Developer's failure to maintain or require any such insurance.

(b) Liability insurance policies shall name the Indemnitees as additional insureds. An endorsement shall be provided which states the coverage is primary insurance and that no other insurance held by Agency or City will be called upon to contribute to a loss under such coverage.

(c) Developer shall furnish to the Agency duplicate originals of all insurance policies required hereunder (or at Agency's election, certificates evidencing such insurance coverage or coverages) prior to commencement of construction (or any work related thereto) on the Property, but in no event later than thirty (30) days after the Effective Date, and such certificate(s) shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days' prior written notice to Agency.

(d) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Agency and City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Agency or City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse Agency or City for such expense upon receipt of billing from Agency or City.

(e) The insurance policies specified in this Article shall be provided by a reputable company or companies, licensed to do business in California with an A.M. Best's rating of not less than A:VII.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Agency which shall not excuse performance by Agency), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and Agency (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency). Agency and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Developer: Western Pacific Housing, Inc.
2300 Clayton Road, Suite 800
Concord, CA 94520
Attention: Richard Ambrosini

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VI, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named party shall be deemed to apply to any permitted successor and assign of such party who has acquired an interest in compliance with this Agreement or under law.

11.7 Survival. All representations made by Developer hereunder and Developer's obligations pursuant to Sections 3.13, 3.16, 5.3, 8.1, 8.2, 10.1, 11.1 and 11.19 shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion.

11.8 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.9 Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Executive Director determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration.

11.10 Entire Agreement. This Agreement, including Exhibits A through D attached hereto and incorporated herein by this reference, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Amendment may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.13 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.15 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of Agency or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

11.16 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

11.17 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California.

11.19 General Indemnification. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless Indemnitees from all Claims (including without limitation, attorneys' fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by the City or the Agency or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement. The Agency will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. The Agency and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the Agency or City chooses to do so, Developer shall reimburse Agency and City for reasonable attorneys' fees and expenses incurred.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By: Charles Lawson
Its: Acting Executive Director

ATTEST:

Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

WESTERN PACIFIC HOUSING, INC., a
Delaware corporation

By: 
Richard Ambrosini
Its: Vice-President

Exhibit A

LEGAL DESCRIPTION OF PROPERTY
(Attach legal description.)

Exhibit B

FORM OF MEMORANDUM OF OWNER PARTICIPATION AGREEMENT

Exhibit C

FORM OF CERTIFICATE OF COMPLETION

Exhibit D

FORM OF REGULATORY AGREEMENT

Exhibit A

LEGAL DESCRIPTION OF PROPERTY
(Attach legal description.)

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

Parcel One:

Beginning at a point on the Easterly line of the State Highway, leading from San Jose to Milpitas, known as San Jose-Oakland Road, distant thereon Northerly 534 feet from the intersection of said line of the San Jose and Milpitas Road, with the centerline of Trimble Road, said point of beginning also being the Northwesterly corner of that certain parcel of land designated as Parcel No. 2 in the Deed from Abe De Vries, et al, to Frank Garibaldi, et ux, by Deed dated May 15, 1946 and recorded May 23, 1946 in Book 1360 of Official Records, Page 109; thence leaving said line of the San Jose and Milpitas Road and running along the Northerly line of said Parcel No. 2 and the Easterly prolongation thereof, North 89° 28' East 560 feet, more or less, to the Westerly line of the lands and right of way of the Southern Pacific Railroad Co.; thence along said Westerly line, North 3° 20' West 83 feet, more or less, to the Southeasterly corner of that certain parcel of land conveyed by Lloyd Janic, et al, to Leslie W. Austin, et ux, by Deed dated July 1, 1946 and recorded December 12, 1946 in Book 1387 of Official Records, Page 576; thence along the Southerly line of said parcel of land so conveyed to Austin, Westerly 555 feet, more or less, to the Easterly line of the San Jose and Milpitas Road; thence along said line of the San Jose and Milpitas Road, South 0° 32' East 141.54 feet to the point of beginning, being a part of the Milpitas Rancho.

Parcel Two:

All of Parcel 2, as shown that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

Parcel Three:

A non-exclusive easement for ingress and egress as reserved in the Deed recorded September 12, 1967 in Book 7852 page 586 of Official Records and being more particularly described as follows:

Beginning at the Northwesterly corner of that certain parcel of land described in the Deed from Spivac-Bollinger Development Company, a partnership to Shell Oil Company, a Delaware corporation, recorded September 12, 1967 in Book 7852, page 586, Official Records; thence from said point of beginning and along the Westerly line of said land deeded to Shell Oil Company, South 0° 30' 28" East 20.00 feet to a point; thence leaving last said line, North 89° 29' 32" East 50.00 feet to an angle point on the Northerly line of said land deeded to Shell Oil Company; thence along last said line, North 68° 42' 23" West 53.85 feet to the point of beginning.

Parcel Four:

An easement for ingress and egress for the benefit of Parcel 2 over that portion of Parcel 1 located along the Southerly boundary line of Parcel 1 and designated "25' Ingress, Egress P.S.U.E." and its Westerly prolongation to South Main Street on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

Parcel Five:

All of Parcel 3, as shown upon that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

Excepting therefrom all that certain real property described as "Parcel 1" in that certain Grant Deed to the County of Santa Clara recorded May 7, 1992 in Book M180, Page 2141, Official Records, and being more particularly described as follows:

All that certain real property situate in the City of Milpitas, County of Santa Clara, State of California and being portions of Parcels 3, 4 and 6 as described in that certain grant deed to Kenneth V. Frost and Fern Frost recorded on October 12, 1984, in Book I958 of Official Records at page 114, and being described as follows:

Commencing at a point on the centerline of Montague Expressway (formerly Trimble Road) distant thereon South 83° 17' 16" East, 473.59 feet from the point of intersection thereof with the centerline of South Main Street, (formerly San Jose-Oakland Road), and being a point on the Westerly line of that certain tract of land described in the deed from Lloyd Janic, at al, to Insulation Products, Inc., a corporation, dated May 19, 1947, recorded May 26, 1947, in Book 1434 of Official Records at Page 505; thence North 1° 31' 46" West along said Westerly line 67.70 feet to the Northeast corner of Parcel E as shown on that certain Record of Survey filed for Record in Book 296 of Maps at Page 48, Santa Clara County Records and the true point of beginning; thence North 83° 17' 16" West, 234.84 feet along a line parallel with and distant 67.00 feet Northerly measured at right angles from the centerline of said Montague Expressway and being also the Northerly line of Parcels B, C and E as shown on said Record of Survey to the general Easterly boundary line of that certain parcel of land, described in the deed from Spivak Bollinger Development Company, a Delaware corporation to Shell Oil Company, a Delaware corporation dated July 29, 1967, recorded September 12, 1967, in Book 7852 of Official Records at Page 586; thence along said line North 19° 55' 58" West, 13.43 feet; thence leaving said line South 83° 17' 16" East, 239.12 feet along a line parallel with and distant Northerly 79.00 feet measured at right angles from the centerline of said Montague Expressway to a point on the Westerly line of said land of Insulation Products; thence South 1° 31' 46" East along said Westerly line a distance of 12.13 feet to the true point of beginning.

Parcel Six:

A non-exclusive easement for ingress and egress as reserved in the Deed recorded September 12, 1967 in Book 7852 page 586 of Official Records and being more particularly described as follows:

Beginning at the Southeasterly corner of that certain parcel of land described in the Deed from Spivac-Bollinger Development Company, a partnership to Shell Oil Company, a Delaware corporation, recorded September 12, 1967 in Book 7852, page 586; thence along the Southerly line of said land deeded to Shell Oil Company, North 80° 29' 59" West 20.00 feet to a point; thence leaving last said line, North 0° 30' 28" West 50.00 feet to an angle point in the Easterly line of said land deed to Shell Oil Company; thence along last said line South 20° 43' 37" East 56.99 feet to the point of beginning.

Parcel Seven:

An easement for ingress and egress over that portion of Parcel 1 located in the Northeast corner and designated as "Ingress and Egress Easement" and as shown on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

APN: 086-34-017, 019, 020

ARB: 86-34-2, 3.01, 4.01.01, 4.01.02, 6.01.01, 6.02, 6.02.01, 6.01.02, 7.01, 7.02, 11

Exhibit B

FORM OF MEMORANDUM OF OWNER PARTICIPATION AGREEMENT

Recording requested by and when
recorded mail to:

Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

MEMORANDUM OF OWNER PARTICIPATION AGREEMENT

This Memorandum of Owner Participation Agreement (this "**Memorandum**") dated as of _____, 2006, is entered into by and between the Redevelopment Agency of the City of Milpitas, a public agency ("**Agency**") and Western Pacific Housing, Inc. a Delaware corporation ("**Developer**").

1. Consistent with California Community Redevelopment Law (Health & Safety Code Section 33000 *et seq.*) and the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 ("**Project Area**"), Agency and Developer have entered into that certain Owner Participation Agreement dated as of the date hereof (the "**OPA**"), pursuant to which Developer has agreed to develop certain real property (the "**Property**") located within the Project Area and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

2. Among other conditions, the OPA provides that Developer shall construct a 147-unit residential condominium project on the Property which shall include 29 units that Developer shall sell to eligible households of moderate- and very low- income pursuant to the terms of the OPA and a Regulatory Agreement and Declaration of Restrictive Covenants ("**Regulatory Agreement**") which shall be recorded in Official Records of Santa Clara County substantially concurrently herewith.

3. The OPA further provides that (i) except as permitted by the OPA, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the improvements located thereon without the prior written approval of the Agency; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the OPA which pertain to the portion of the Property transferred, including without limitation, the provisions of the Regulatory Agreement.

4. Developer and Agency have executed and recorded this instrument to give notice of the OPA and the Regulatory Agreement, and the respective rights of Developer and Agency thereunder. Copies of the unrecorded OPA are available at the offices of the Agency, 455 East Calaveras, Milpitas California, and such document is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the OPA, the OPA shall control.
5. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.
6. The OPA shall bind and inure to the benefit of the Developer and the Agency and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

Executive Director

ATTEST:

Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

WESTERN PACIFIC HOUSING, INC.,
a Delaware corporation

By: _____


Richard Ambrosini

Its: Vice-President

SIGNATURES MUST BE NOTARIZED.

State of California)
)
County of Santa Clara)

On _____, 20__, before me, the undersigned, a Notary Public, in and for said State and County, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Exhibit A

PROPERTY

(Attach legal description.)

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

Parcel One:

Beginning at a point on the Easterly line of the State Highway, leading from San Jose to Milpitas, known as San Jose-Oakland Road, distant thereon Northerly 534 feet from the intersection of said line of the San Jose and Milpitas Road, with the centerline of Trimble Road, said point of beginning also being the Northwesterly corner of that certain parcel of land designated as Parcel No. 2 in the Deed from Abe De Vries, et al, to Frank Garibaldi, et ux, by Deed dated May 15, 1946 and recorded May 23, 1946 in Book 1360 of Official Records, Page 109; thence leaving said line of the San Jose and Milpitas Road and running along the Northerly line of said Parcel No. 2 and the Easterly prolongation thereof, North 89° 28' East 560 feet, more or less, to the Westerly line of the lands and right of way of the Southern Pacific Railroad Co.; thence along said Westerly line, North 3° 20' West 83 feet, more or less, to the Southeasterly corner of that certain parcel of land conveyed by Lloyd Janic, et al, to Leslie W. Austin, et ux, by Deed dated July 1, 1946 and recorded December 12, 1946 in Book 1387 of Official Records, Page 576; thence along the Southerly line of said parcel of land so conveyed to Austin, Westerly 555 feet, more or less, to the Easterly line of the San Jose and Milpitas Road; thence along said line of the San Jose and Milpitas Road, South 0° 32' East 141.54 feet to the point of beginning, being a part of the Milpitas Rancho.

Parcel Two:

All of Parcel 2, as shown that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

Parcel Three:

A non-exclusive easement for ingress and egress as reserved in the Deed recorded September 12, 1967 in Book 7852 page 586 of Official Records and being more particularly described as follows:

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An easement for ingress and egress for the benefit of Parcel 2 over that portion of Parcel 1 located along the Southerly boundary line of Parcel 1 and designated "25' Ingress, Egress P.S.U.E." and it Westerly prolongation to South Main Street on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

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Excepting therefrom all that certain real property described as "Parcel 1" in that certain Grant Deed to the County of Santa Clara recorded May 7, 1992 in Book M180, Page 2141, Official Records, and being more particularly described as follows:

All that certain real property situate in the City of Milpitas, County of Santa Clara, State of California and being portions of Parcels 3, 4 and 6 as described in that certain grant deed to Kenneth V. Frost and Fern Frost recorded on October 12, 1984, in Book 1958 of Official Records at page 114, and being described as follows:

Commencing at a point on the centerline of Montague Expressway (formerly Trimble Road) distant thereon South 83° 17' 16" East, 473.59 feet from the point of intersection thereof with the centerline of South Main Street, (formerly San Jose-Oakland Road), and being a point on the Westerly line of that certain tract of land described in the deed from Lloyd Janic, at al, to Insulation Products, Inc., a corporation, dated May 19, 1947, recorded May 26, 1947, in Book 1434 of Official Records at Page 505; thence North 1° 31' 46" West along said Westerly line 67.70 feet to the Northeast corner of Parcel E as shown on that certain Record of Survey filed for Record in Book 296 of Maps at Page 48, Santa Clara County Records and the true point of beginning; thence North 83° 17' 16" West, 234.84 feet along a line parallel with and distant 67.00 feet Northerly measured at right angles from the centerline of said Montague Expressway and being also the Northerly line of Parcels B, C and E as shown on said Record of Survey to the general Easterly boundary line of that certain parcel of land, described in the deed from Spivak Bollinger Development Company, a Delaware corporation to Shell Oil Company, a Delaware corporation dated July 29, 1967, recorded September 12, 1967, in Book 7852 of Official Records at Page 586; thence along said line North 19° 55' 58" West, 13.43 feet; thence leaving said line South 83° 17' 16" East, 239.12 feet along a line parallel with and distant Northerly 79.00 feet measured at right angles from the centerline of said Montague Expressway to a point on the Westerly line of said land of Insulation Products; thence South 1° 31' 46" East along said Westerly line a distance of 12.13 feet to the true point of beginning.

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APN: 086-34-017, 019, 020

ARB: 86-34-2, 3.01, 4.01.01, 4.01.02, 6.01.01, 6.02, 6.02.01, 6.01.02, 7.01, 7.02, 11

Exhibit C

FORM OF CERTIFICATE OF COMPLETION

Recording requested by and when
recorded mail to:

Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

CERTIFICATE OF COMPLETION

This Certificate of Completion (the "**Certificate**") is made by the Redevelopment Agency of the City of Milpitas, a public agency (the "**Agency**") effective as of _____, 20__.

RECITALS

A. Agency and Senior Western Pacific Housing, Inc. a Delaware corporation (the "**Developer**") entered into that certain Owner Participation Agreement (the "**OPA**") dated _____, 2006 concerning the construction of one hundred forty-seven (147) townhouse units, of which twenty-nine (29) units will be sold at an affordable housing cost to very low- and moderate-income households (the "**Restricted Units**"), located at 1696 South Main Street/75 Montague Expressway in the City and more particularly described in Exhibit A attached hereto ("**Property**"). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the OPA.

B. Pursuant to Section 3.14 of the OPA, the Agency is required to furnish the Developer or its successors with a Certificate of Completion upon completion construction of the Project (or phase thereof) and the sale of the Restricted Units in accordance with the OPA, and the issuance by the City of Milpitas of a Certificate of Occupancy for the Improvements.

C. The Agency has determined that the Improvements and the Project (or phase hereof as specified in Section 1 below) have been satisfactorily completed and that the Restricted Units in the phase specified below have been sold, all in accordance with the OPA.

NOW, THEREFORE, Agency hereby certifies as follows:

1. Phase ____ of the Project and the Improvements consisting of the building known as _____ has been satisfactorily completed, and the Restricted Units included in such phase have been sold in conformance with the OPA.

2. All use, maintenance and nondiscrimination covenants contained in the OPA shall remain in effect and enforceable in accordance with the OPA. This Certificate does not constitute evidence of Developer's compliance with those covenants in the OPA that survive the issuance of this Certificate, including without limitation, compliance with the Regulatory Agreement entered into pursuant to the OPA.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Improvements or any part thereof and does not constitute a notice of completion under California Civil Code Section 3093.

4. Nothing contained in this instrument shall modify any provisions of the OPA, the Regulatory Agreement, or any other document executed in connection therewith.

IN WITNESS WHEREOF, Agency has executed and issued this Certificate of Completion as of the date first written above.

**REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

By: **FORM-DO NOT SIGN**

Name: _____
 Executive Director

ATTEST:

By: **FORM- DO NOT SIGN**
 Agency Secretary

APPROVED AS TO FORM:

By: **FORM-DO NOT SIGN**
 Agency Counsel

SIGNATURES MUST BE NOTARIZED.

State of California)
)
County of Santa Clara)

On _____, 20____, before me, the undersigned, a Notary Public, in and for said State and County, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Exhibit A

LEGAL DESCRIPTION OF PROPERTY
(Attach legal description.)

LEGAL DESCRIPTION

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Parcel Seven:

An easement for ingress and egress over that portion of Parcel 1 located in the Northeast corner and designated as "Ingress and Egress Easement" and as shown on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

APN: 086-34-017, 019, 020

ARB: 86-34-2, 3.01, 4.01.01, 4.01.02, 6.01.01, 6.02, 6.02.01, 6.01.02, 7.01, 7.02, 11

Exhibit D

FORM OF REGULATORY AGREEMENT

Recording requested by and when
recorded mail to:

Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

WESTERN PACIFIC HOUSING, INC.

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "**Agreement**") is entered into effective as of _____, 2006 (the "**Effective Date**") by and between the Redevelopment Agency of the City of Milpitas, a public agency (the "**Agency**") and Western Pacific Housing, Inc., a Delaware corporation ("**Developer**"). Developer and Agency are hereinafter collectively referred to as the "**Parties.**"

RECITALS

A. Developer is the owner of or has the contractual right to purchase certain real property located in the City of Milpitas ("**City**") at 1696 South Main Street/75 Montague Expressway and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"). The Property is located within the Milpitas Redevelopment Project Area No. 1.

B. Developer intends to construct on the Property a 147-unit residential condominium project (the "**Project**") in accordance with that certain Owner Participation Agreement dated as of the date hereof (the "**OPA**") and executed by and between Agency and Developer, a memorandum of which shall be recorded in the Official Records of Santa Clara County substantially concurrently herewith. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the OPA.

C. The OPA requires Developer to sell no fewer than 29 of the residential units in the Project at prices affordable to households of Moderate-Income, and requires Developer to sell no fewer than nine of such units at a price affordable to households of Very Low-Income.

D. Pursuant to the OPA, the Agency has agreed to provide deferred second mortgages or other housing subsidies to eligible Very Low-Income households to assist them in the purchase of units in the Project.

E. As a condition to its agreement to enter into the OPA and to provide financial assistance to eligible households, Agency requires the Property to be subject to the terms, conditions and restrictions set forth herein.

F. The Parties intend the covenants in this Agreement to run with the land and be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties declare, covenant and agree by and for themselves, their heirs, executor, administrators and assigns, and all persons claiming under or through them, that the Property shall be held, transferred, encumbered, hypothecated, used, sold conveyed, improved, leased, and occupied subject to the covenants, conditions and restrictions hereinafter set forth, and further agree as follows.

1. **Definitions.** The following terms shall have the meanings set forth below whenever such terms are used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

1.1 **"Affordable Housing Cost"** shall have the meaning ascribed to such term in California Health and Safety Code Section 50052.5 or successor provision and the regulations promulgated pursuant thereto. Pursuant to the foregoing, as of the Effective Date Affordable Housing Cost means: (a) for Moderate-Income Eligible Buyers whose Gross Income is less than or equal to 110 percent of Area Median Income adjusted for household size, a Housing Cost that is not less than 28 percent of the Gross Income of the household and which does not exceed the product of 35 percent times 110 percent of the Area Median Income adjusted for household size appropriate for the unit, (b) for Moderate-Income Eligible Purchasers whose Gross Income exceeds 110 percent of Area Median Income adjusted for household size, a Housing Cost that does not exceed the product of 35 percent of the Gross Income of the household, and (c) for Very-Low Income Eligible Purchasers, a Housing Cost that does not exceed the product of 30 percent times 50 percent of Area Median Income adjusted for household size appropriate for the unit. Pursuant to California Health and Safety Code Section 50052.5(h), the phrase **"adjusted for household size appropriate to the unit"** shall mean a household of one person for a studio unit, two persons for a one-bedroom unit, three persons for a two-bedroom unit, and four persons for a three-bedroom unit.

1.2 **"Area Median Income"** means the area median income for Santa Clara County, California, adjusted for household size, published periodically by the California Department of Housing and Community Development ("**HCD**") in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

1.3 **"Eligible Buyer"** means a prospective purchaser of a Restricted Unit who has been pre-qualified by the Agency or its designee and who satisfies all of the following requirements:

(a) Gross Income for the prospective purchaser's household does not exceed the maximum income level for the applicable Restricted Unit as specified in Section 3 and has not exceeded such amount for the full calendar year immediately preceding the date of purchase.

(b) The prospective purchaser certifies that he or she intends to occupy the Restricted Unit as his or her principal residence.

(c) The prospective purchaser does not own any other residential real property at the time of the purchase.

(d) The prospective purchaser meets all other applicable eligibility requirements of the Agency in effect at the time of the purchase.

1.4 **"Gross Income"** shall have the meaning ascribed to such term in Section 6914 of the Regulations or any successor thereto.

1.5 **"Housing Cost"** shall have the meaning ascribed to such term in Section 6920 of the Regulations or any successor thereto.

1.6 **"Maximum Initial Sale Price"** means the maximum initial price for a Restricted Unit as described in Section 3.

1.7 **"Moderate-Income"** means an annual household Gross Income of not greater than 120% of the Area Median Income adjusted for household size.

1.8 **"Regulations"** means Title 25 of the California Code of Regulations.

1.9 **"Restricted Unit"** means a residential unit in the Project which is reserved for sale to an Eligible Buyer of Very Low- or Moderate-Income at a price that will result in an Affordable Housing Cost in accordance with and as set forth in Section 3.

1.10 **"Very Low-Income"** means an annual household Gross Income of not greater than 50% of the Area Median Income adjusted for household size.

2. Marketing; Qualification of Eligible Buyers. Developer shall market the Restricted Units to Eligible Buyers in compliance with all applicable fair housing laws and no later than concurrently with the marketing of the remainder of the units in the Project. In Agency's discretion, Agency shall pre-qualify Eligible Buyers or shall delegate such responsibility to another entity or to Developer. Developer shall provide to the Agency proof that prospective purchasers of the Restricted Units qualify as Eligible Buyers at such time and in such form as Agency may reasonably require.

3. Sale of Restricted Units. Developer shall sell twenty-nine (29) of the dwelling units in the Project (**"Restricted Units"**) in accordance with all of the following terms and conditions:

(i) The Restricted Units shall be sold only to Eligible Buyers who have been pre-qualified by Agency or its designee.

(ii) Twenty (20) of the Restricted Units shall be sold at a price not in excess of the Maximum Initial Sale Price to Eligible Buyers whose household Gross Income does not exceed Moderate-Income.

(iii) Nine (9) of the Restricted Units shall be sold at a price not in excess of the Maximum Initial Sale Price to Eligible Buyers whose household Gross Income does not exceed Very Low-Income.

(iv) The Restricted Units shall be dispersed throughout the Project in the locations shown on the Location Plan approved by the Agency's Executive Director and attached to this Agreement as Exhibit B.

(v) The Restricted Units shall be of the same general design as the other units in the Project and shall be comparable to such units in size, amenities and quality of construction.

(vi) The Restricted Units shall be of the following size:

Moderate Income Units: 20 three-bedroom units

Very Low-Income Units: 9 three-bedroom units

(vii) In connection with the sale of each Restricted Unit, Developer shall require the purchaser to execute a Resale Restriction Agreement and Option to Purchase ("**Resale Agreement**") in a form provided by Agency and shall cause such Resale Agreement to be recorded in the Official Records of Santa Clara County concurrently with the recordation of the grant deed conveying title of the Restricted Unit. The Resale Agreement shall provide that the Restricted Unit may only be sold to Eligible Households at an affordable price as specified in the Resale Agreement, and will further provide that the Agency shall have a right of first offer to purchase the Restricted Unit and an option to purchase such unit upon the occurrence of specified triggering events.

3.1 Maximum Initial Sale Price. Developer shall sell the Restricted Units to Eligible Buyers at a price that is not in excess of the Maximum Initial Sale Price as determined by the Agency based upon the then-current Regulations and California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*). The Parties acknowledge that the Maximum Initial Sale Price is intended to enable Eligible Buyers to purchase the Restricted Units at a price that will result in an Affordable Housing Cost for such Eligible Buyers, taking into account the following conditions:

(i) Area Median Income for Eligible Buyers shall be determined at the time the Eligible Buyer is pre-qualified for purchase in accordance with Section 2 hereof;

(ii) Maximum Initial Sale Price shall be determined based on an assumed five percent (5%) down payment; however, the actual down payment provided by the purchasers may be greater or less than this amount.

(iii) the interest rate used to determine the Maximum Initial Sale Price shall be the lower of (a) the prevailing market interest rate when the Eligible Buyer(s) is pre-qualified or (b) the interest rate for which Developer has obtained a commitment usable for purposes of the Eligible Buyer(s)' purchase.

Exhibit C attached hereto provides examples of the calculations of the Maximum Initial Sale Price. The Parties acknowledge that (i) Exhibit C is intended for illustrative purposes only, and (ii) calculation of the Maximum Initial Sale Price will be dependent upon interest rates, lender down payment requirements and the provisions of applicable law and regulations in effect at the time of determination. Furthermore, the Parties acknowledge that in the event of conflict between Exhibit C and the text of this Agreement or the OPA, the text of this Agreement and the OPA shall prevail.

3.2 Compliance Monitoring. Prior to the close of escrow for the initial sale of each Restricted Unit, Developer shall forward to the City evidence of the purchaser's status as an Eligible Buyer, copies of the buyer's and seller's settlement statements, and executed copies of all closing documents, including the Resale Agreement.

4. Agency Financial Assistance; Agency Documents.

4.1 Agency Financial Assistance. Agency shall provide financing in the aggregate amount of \$1,200,000 to assist Very-Low Income Eligible Buyers to purchase the Restricted Units that are reserved for Very Low-Income households ("**Very Low-Income Units**") pursuant to the terms and conditions set forth in Section 4.2 and such additional conditions pertaining to the provision of such assistance as Agency may adopt from time to time.

4.2 Agency Documents. In connection with the initial sale of each Very Low-Income Unit to an Eligible Buyer, in accordance with reasonable underwriting criteria, the Agency shall provide to such purchaser a deferred payment second mortgage ("**Agency Loan**") in the principal amount of \$133,333. Each Eligible Buyer receiving financing from the Agency in connection with the purchase of a Restricted Unit shall be required to execute a promissory note in the amount of the Agency Loan, a Resale Agreement and a deed of trust ("**Agency Deed of Trust**") which shall provide the Agency with a security interest in the Restricted Unit to secure repayment of the Agency Loan and the performance of purchaser's obligations under the Resale Agreement. For each Restricted Unit, including those for which the Agency does not provide financial assistance, an Agency Deed of Trust and a Resale Agreement shall be recorded in the Official Records of Santa Clara County concurrently with recordation of the grant deed conveying the Restricted Unit to the Eligible Buyer.

5. Maintenance of Property. Developer shall maintain the improvements and landscaping on the Property in accordance with the Milpitas Municipal Code, and in a manner consistent with community standards so as to maintain the value of the Property. The Developer shall comply with any and all covenants and agreements established by any Declaration of Covenants, Conditions, and Restrictions affecting the Property, and shall comply with all applicable federal,

state and local laws affecting the Property. Notwithstanding the foregoing, Developer's obligations established by this Section 5 may be assumed by a homeowner's association comprised of the owners of the residential condominiums in the Project, and upon such association's assumption of such obligations, Developer shall be released therefrom except to the extent that Developer remains obligated pursuant to the terms of any such declaration or homeowner's association charter and bylaws or other governing documents.

6. Enforcement. The Agency and the City are deemed to be the beneficiaries of this Agreement and the covenants herein, both for and in their own right and for the purpose of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants set forth herein have been provided. If any such covenants are breached, the Agency and the City shall have the right to exercise all rights and remedies at law or in equity, expressly including the remedy of specific performance, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties hereunder are cumulative.

7. Defaults. The failure or delay by Developer to perform any term or provision of this Agreement constitutes a default.

a. The Agency shall give written notice of default to Developer, specifying the nature of the default. Any failure or delay by Agency in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

b. No failure or delay by the Agency in the assertion of any of its rights and remedies as to any default shall operate as a waiver of any default or of any such rights or remedies.

c. In the event of a monetary default, Developer shall have a reasonable period of time to cure the default following delivery of Agency's notice of default; provided that in no event shall the Agency be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or if the default is not cured within thirty (30) days after the notice of default is first given.

d. In the event of a non-monetary event of default, if the default is reasonably capable of being cured within thirty (30) days, Developer shall have such period to effect a cure prior to Agency's exercise of remedies. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Developer (i) initiates corrective action within such period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to Agency's exercise of remedies; provided however, in no event shall the Agency be precluded from exercising remedies if its security

becomes or is about to become materially jeopardized by any failure to cure a default or if the default is not cured within sixty (60) days after the notice of default is first given.

7.1 Limitation on Damages. In no event shall damages be awarded against City or Agency upon an event of default or upon termination of this Agreement. Nothing herein is intended to limit Developers right to seek injunctive or other equitable relief. Agency acknowledges and agrees that an action by Developer for injunctive or other equitable relief ordering the disbursement of any Agency Loan proceeds is not and shall not be construed to be an action for damages.

7.2 Mortgagee Right to Cure Default.

(a) This Agreement shall be recorded concurrently with the recordation of the Memorandum of OPA and shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien for any loan, deed of trust, or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any lender, deed of trust beneficiary, or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

(b) If Agency receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then Agency shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by Agency that Developer has committed a default hereunder. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the default set forth in the Agency's notice. Acting in the discretion of its Executive Director, Agency may extend the cure periods specified in Section 7 for up to an additional sixty (60) days upon request of a Mortgagee.

8. Covenants to Run with the Land. Developer hereby subjects the Property to the covenants, conditions and restrictions set forth in this Regulatory Agreement. The Parties hereby declare their express intent that all such covenants, conditions and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Developer's successors in title to the Property. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency and the City, and such covenants shall run in favor of the Agency for the entire term of this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed applicable to or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instrument.

9. Nondiscrimination.

9.1 Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, or any part thereof, nor shall Developer, or any party or person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property, or any part thereof.

9.2 Anti-Discrimination Clauses in Agreements. Developer and its successors and assigns shall refrain from restricting the rental, sale, or lease of any portion of the Property or the Project to any person on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

9.2.1 In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee himself, or any persons claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

9.2.2 In leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of status, race, color, creed, religion, sex, marital status, ancestry, disability, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased, nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

9.2.3 In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of status, race, color, creed, religion, sex, marital status, ancestry, disability, or national origin in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference

to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of land.”

10. Term; Release of Property from Agreement.

(a) Subject to paragraph (b) below, the term of this Agreement shall commence upon the Effective Date, and shall, without regard to technical classification or designation, shall run with the land and be binding on Developer and its successors and assigns for the benefit of the Agency and the City. The covenants contained in Sections 9.1 and 9.2 shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the longest feasible time, but not less than forty-five (45) years.

(b) Notwithstanding the foregoing paragraph, this Agreement shall be terminated and the lien hereof shall be extinguished and released from title to the Property upon the occurrence of all the following: (i) the issuance of final certificates of occupancy for all of the Restricted Units, (ii) the sale of all of the Restricted Units to Eligible Buyers, and (iii) the recordation of a Resale Agreement and Agency Deed of Trust for all Restricted Units. Provided that conditions (i) through (iii) above have been satisfied with regards to an entire building with the Project, then that specific building will be released from this Agreement.

11. Insurance and Indemnity.

11.1 Indemnity. Developer shall indemnify, defend (with counsel approved by Agency) and hold Agency, the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Developer’s development, sale or ownership of the Restricted Units and/or the Project, or Developer’s performance or nonperformance under this Agreement or the OPA. Developer’s indemnification obligations under this Section 11.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 11.1 shall survive the issuance of a Certificate of Completion for the Project, the expiration or earlier termination of this Agreement and the release of the Property or any part thereof from the burdens of this Agreement. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Developer, of any of the insurance policies described in this Agreement or the OPA.

11.2 Insurance. Until the sale of the Restricted Units to Eligible Buyers in compliance with this Agreement, Developer shall maintain at Developer’s expense, comprehensive general liability insurance and property damage insurance in compliance with the requirements set forth in the OPA.

12. Miscellaneous.

12.1 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice shall be deemed delivered upon receipt;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- (iii) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- (iv) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency:

Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

Developer:

Western Pacific Housing, Inc.
2300 Clayton Road, Suite 800
Concord, CA 94520
Attention: Richard Ambrosini

12.2 Attorneys' Fees. In the event that Agency, City or Developer brings an action by reason of the breach of any condition, covenant, representation or warranty contained herein, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

12.3 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for

performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties and duly recorded in the Official Records of Santa Clara County.

12.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

12.5 Captions; Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

12.6 Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Executive Director determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration.

12.7 Entire Agreement. This Agreement, including Exhibits A through C attached hereto and incorporated herein by this reference, together with the OPA, contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements with respect to the subject matter hereof.

12.8 Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Each reference in this Agreement to a specifically named Party shall be deemed to apply to any successor or assign of such Party who has acquired an interest in the Property.

12.9 Due Authorization. Developer hereby represents and warrants that all actions necessary on the part of Developer to authorize the execution of this Agreement and to undertake the actions contemplated hereby have been undertaken and the persons executing this Agreement on behalf of Developer have been duly authorized to do so.

12.10 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

12.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one instrument.

12.12 Further Assurances. The Parties agree to execute such instruments and to undertake such actions, as may be necessary to effectuate the intent of this Agreement.

12.13 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California.

12.14 Time is of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

12.15 Future Enforcement by City. The Parties hereby agree that should the Agency cease to exist as an entity at any time during the term of this Agreement, the City shall have the right to enforce all of the terms and conditions herein, unless the Agency has previously specified another entity to enforce this Agreement.

IN WITNESS WHEREOF, the Agency and Developer have executed this Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

AGENCY

REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

By: Charles Lawson
Its: Acting Executive Director

ATTEST:

Mary Lavelle, Agency Secretary


APPROVED AS TO FORM:

Agency Counsel

DEVELOPER

Execution Copy

WESTERN PACIFIC HOUSING, INC., a
Delaware corporation

By: 
Richard Ambrosini
Is: Vice President

SIGNATURES MUST BE NOTARIZED.

State of California)
)
County of Santa Clara)

On _____, 20__, before me, the undersigned, a Notary Public, in and for said State and County, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Exhibit A

PROPERTY

(Attach legal description.)

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

Parcel One:

Beginning at a point on the Easterly line of the State Highway, leading from San Jose to Milpitas, known as San Jose-Oakland Road, distant thereon Northerly 534 feet from the intersection of said line of the San Jose and Milpitas Road, with the centerline of Trimble Road, said point of beginning also being the Northwesterly corner of that certain parcel of land designated as Parcel No. 2 in the Deed from Abe De Vries, et al, to Frank Garibaldi, et ux, by Deed dated May 15, 1946 and recorded May 23, 1946 in Book 1360 of Official Records, Page 109; thence leaving said line of the San Jose and Milpitas Road and running along the Northerly line of said Parcel No. 2 and the Easterly prolongation thereof, North 89° 28' East 560 feet, more or less, to the Westerly line of the lands and right of way of the Southern Pacific Railroad Co.; thence along said Westerly line, North 3° 20' West 83 feet, more or less, to the Southeasterly corner of that certain parcel of land conveyed by Lloyd Janic, et al, to Leslie W. Austin, et ux, by Deed dated July 1, 1946 and recorded December 12, 1946 in Book 1387 of Official Records, Page 576; thence along the Southerly line of said parcel of land so conveyed to Austin, Westerly 555 feet, more or less, to the Easterly line of the San Jose and Milpitas Road; thence along said line of the San Jose and Milpitas Road, South 0° 32' East 141.54 feet to the point of beginning, being a part of the Milpitas Rancho.

Parcel Two:

All of Parcel 2, as shown that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

Parcel Three:

A non-exclusive easement for ingress and egress as reserved in the Deed recorded September 12, 1967 in Book 7852 page 586 of Official Records and being more particularly described as follows:

Beginning at the Northwesterly corner of that certain parcel of land described in the Deed from Spivac-Bollinger Development Company, a partnership to Shell Oil Company, a Delaware corporation, recorded September 12, 1967 in Book 7852, page 586, Official Records; thence from said point of beginning and along the Westerly line of said land deeded to Shell Oil Company, South 0° 30' 28" East 20.00 feet to a point; thence leaving last said line, North 89° 29' 32" East 50.00 feet to an angle point on the Northerly line of said land deeded to Shell Oil Company; thence along last said line, North 68° 42' 23" West 53.85 feet to the point of beginning.

Parcel Four:

An easement for ingress and egress for the benefit of Parcel 2 over that portion of Parcel 1 located along the Southerly boundary line of Parcel 1 and designated "25' Ingress, Egress P.S.U.E." and its Westerly prolongation to South Main Street on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

Parcel Five:

All of Parcel 3, as shown upon that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

Excepting therefrom all that certain real property described as "Parcel 1" in that certain Grant Deed to the County of Santa Clara recorded May 7, 1992 in Book M180, Page 2141, Official Records, and being more particularly described as follows:

All that certain real property situate in the City of Milpitas, County of Santa Clara, State of California and being portions of Parcels 3, 4 and 6 as described in that certain grant deed to Kenneth V. Frost and Fern Frost recorded on October 12, 1984, in Book I958 of Official Records at page 114, and being described as follows:

Commencing at a point on the centerline of Montague Expressway (formerly Trimble Road) distant thereon South 83° 17' 16" East, 473.59 feet from the point of intersection thereof with the centerline of South Main Street, (formerly San Jose-Oakland Road), and being a point on the Westerly line of that certain tract of land described in the deed from Lloyd Janic, at al, to Insulation Products, Inc., a corporation, dated May 19, 1947, recorded May 26, 1947, in Book 1434 of Official Records at Page 505; thence North 1° 31' 46" West along said Westerly line 67.70 feet to the Northeast corner of Parcel E as shown on that certain Record of Survey filed for Record in Book 296 of Maps at Page 48, Santa Clara County Records and the true point of beginning; thence North 83° 17' 16" West, 234.84 feet along a line parallel with and distant 67.00 feet Northerly measured at right angles from the centerline of said Montague Expressway and being also the Northerly line of Parcels B, C and E as shown on said Record of Survey to the general Easterly boundary line of that certain parcel of land, described in the deed from Spivak Bollinger Development Company, a Delaware corporation to Shell Oil Company, a Delaware corporation dated July 29, 1967, recorded September 12, 1967, in Book 7852 of Official Records at Page 586; thence along said line North 19° 55' 58" West, 13.43 feet; thence leaving said line South 83° 17' 16" East, 239.12 feet along a line parallel with and distant Northerly 79.00 feet measured at right angles from the centerline of said Montague Expressway to a point on the Westerly line of said land of Insulation Products; thence South 1° 31' 46" East along said Westerly line a distance of 12.13 feet to the true point of beginning.

Parcel Six:

A non-exclusive easement for ingress and egress as reserved in the Deed recorded September 12, 1967 in Book 7852 page 586 of Official Records and being more particularly described as follows:

Beginning at the Southeasterly corner of that certain parcel of land described in the Deed from Spivac-Bollinger Development Company, a partnership to Shell Oil Company, a Delaware corporation, recorded September 12, 1967 in Book 7852, page 586; thence along the Southerly line of said land deeded to Shell Oil Company, North 80° 29' 59" West 20.00 feet to a point; thence leaving last said line, North 0° 30' 28" West 50.00 feet to an angle point in the Easterly line of said land deed to Shell Oil Company; thence along last said line South 20° 43' 37" East 56.99 feet to the point of beginning.

Parcel Seven:

An easement for ingress and egress over that portion of Parcel 1 located in the Northeast corner and designated as "Ingress and Egress Easement" and as shown on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California, on May 7, 1992 in Book 636 of Maps, at Pages 39 and 40.

APN: 086-34-017, 019, 020

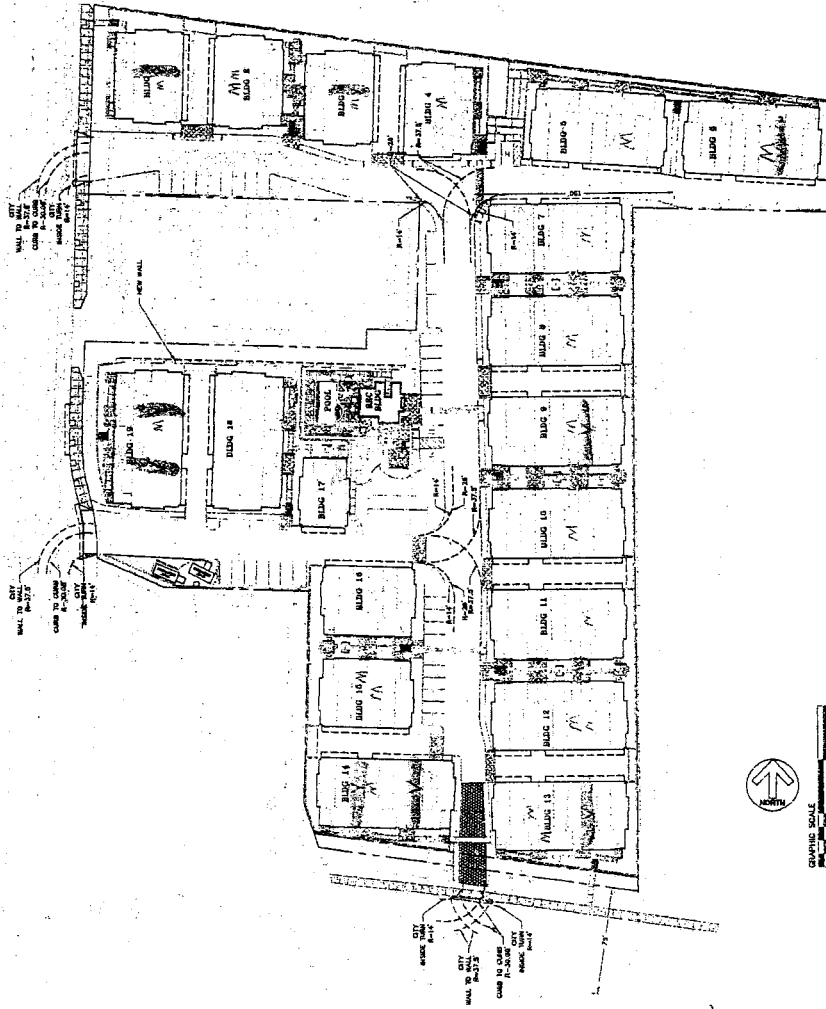
ARB: 86-34-2, 3.01, 4.01.01, 4.01.02, 6.01.01, 6.02, 6.02.01, 6.01.02, 7.01, 7.02, 11

Exhibit B

LOCATION PLAN

(Attach map or depicting location of Restricted Units.)

Exhibit B - Location Plan



FOR REFERENCE ONLY

Exhibit A.2
- Parcel BMR Unit
Location
(D.R. 12/1/105)
Explanation:

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	TRACT NO. 1 MAIN STREET MILPITAS FIRE TRUCK ACCESS PLAN		SUBDIVISION TENTATIVE MAP THIS MAP HAS BEEN REVIEWED BY THE CITY ENGINEER DATE: _____ CITY ENGINEER: _____ RECOMMENDED FOR APPROVAL BY THE MILPITAS PLANNING COMMISSION, THE _____ OF THE CITY OF MILPITAS AND ADOPTED BY THE MILPITAS CITY COUNCIL THIS _____ DAY OF _____, 20____ APPROVED BY: _____ COMMUNITY DEVELOPMENT MANAGER		Project No. _____ Drawing No. MMETO1 E.P. No. _____ Sheet 10 of 10	
	Date: _____ Scale: _____ Range: _____ From: _____ To: _____ Approved: _____ Date: _____		Name: _____ Date: _____ By: _____ Description: _____ City Eng. Appr.: _____ Date: _____		Revisions: _____ Description: _____ City Eng. Appr.: _____ Date: _____	

Exhibit C**Maximum Sales Price Calculation**

Maximum sales price for the very low-income units will be determined based upon the following, as modified by changes in applicable Regulations, income levels, and actual mortgage terms, including interest rates and required down payments:

A.	Three -bedroom unit; assumed household size: 4 persons	
B.	Maximum household income: established by Regulations, currently	\$53,050
C.	Maximum housing cost: 30% x B/12:	1,326
D.	Assumed homeowner association dues per month	350
E.	Assumed utility allowance	0
F.	Assumed property taxes 1.25%	275
G.	Maximum Available for mortgage payment (C less D,E,F)	702
H.	Assumed interest rate	6%
	Maximum supportable debt based on G, H and 30 year term = First	
I.	Mortgage	117,039
J.	Down payment: 3% of total sales price (depending on lender requirements)	13,178
K.	Agency second mortgage	133,333
L.	Total Sales Price (I+J+K)	\$263,550